

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

HAYNES BUILDING SERVICES, LLC

and

Case 31-CA-093920

J. TADEO GOMEZ-FLORES

NOTICE TO SHOW CAUSE

On February 23, 2016, the Board issued a Decision and Order finding that the Respondent violated Section 8(a)(1) of the Act by: (1) maintaining or threatening to enforce a mandatory employment application and an arbitration agreement which required employees, as a condition of employment to waive their right to file class or collective actions in all forums; and (2) maintaining the employment application which interfered with employees' ability to access the Board. 363 NLRB No. 125 (2016). On July 3, 2018, the United States Court of Appeals for the District of Columbia denied enforcement, in light of *Epic Systems Corp. v. Lewis*, 585 U.S. ___, 138 S. Ct. 1612 (2018), of the Board's first findings, and remanded the second finding back to the Board.

At the time of the Board's decision, and Administrative Law Judge Keltner W. Locke's February 7, 2014 decision that the Board affirmed in relevant part on (2), above, the issue whether maintenance of a policy that did not expressly restrict employee access to the Board violated Section 8(a)(1) on the basis that employees would reasonably believe it did would be resolved based on the prong of the analytical framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), that held an employer's maintenance of a facially neutral work rule would be unlawful "if employees would reasonably construe the language to prohibit Section 7 activity." *Id.* at 647. Recently, the Board overruled the *Lutheran Heritage*

“reasonably construe” test and announced a new standard that applies retroactively to all pending cases. *The Boeing Co.*, 365 NLRB No. 154, slip op. at 14-17 (2017).

Accordingly, the Board hereby issues the following notice to show cause why this case should not be remanded to the judge for further proceedings in light of *Boeing*, including, if necessary, the filing of statements, reopening the record, and issuance of a supplemental decision.

NOTICE IS GIVEN that any party seeking to show cause why this case should not be remanded to the administrative law judge must do so in writing, filed with the Board in Washington, D.C., on or before November 13, 2018 (with affidavit of service on the parties to this proceeding). Any briefs or statements in support of the motion shall be filed on the same date.

Dated, Washington, D.C., October 30, 2018.

By direction of the Board:

/s/ Roxanne L. Rothschild

Acting Executive Secretary